IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
ORDER

State of Rajasthan & Anr. vs. Amar Singh & Anr.
(S.B.C.Writ Petition No.4776/02)

Date of Order :- 16th October, 2006.

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. Rameshwar Dave, Dy.Government Advocate.
Mr. Vijay Mehta, Advocate, for the respondents.

REPORTABLE

The State of Rajasthan has filed this writ petition against the award dated 12.6.2001 whereby the learned Labour Court,Jodhpur answered a reference in favour of the respondent-workman holding his removal to be illegal and directing the management to reinstate him in service with continuity in service and awarded 20% back wages from the date of reference.

A reference was made by the appropriate Government on the question whether removal of the respondent-workman by the management on 15.1.1985 from

service was legally justified and if not what relief the workman was entitled to.

The case of the petitioner is that respondent-workman was allegedly retrenched on 15.1.1985 but a reference on the question was made by the appropriate government enormously delayed on 29th May, 1997. The workman however contended before the learned Labour Court that he worked with the management from 1.3.1984 to 14.1.1985 and thus completed continuous service of more than 240 days. He was not the junior most employee when he was retrenched and many of his juniors were retained in service and many new were engaged after he was retrenched. There was thus violation of Section 25-F of the Industrial Disputes Act, 1947(in short "the Act of 1947").

In contesting the case of the respondent-workman, the management pleaded that the workman was engaged for a limited number of days and lastly he abandoned the job on his own. He was not a regular employee nor was he engaged for

the work of permanent nature. It was denied that the workman worked on the post of Pump Driver /Chowkidar . He left the job because he got a better and alternative employment elsewhere. It was in these facts that the aforesaid award was passed by the Labour Court.

I have heard Mr.Rameshwar Dave, learned Dy. Government Advocate for the State and Mr.Vijay Mehta, learned counsel for the respondents and perused the record.

Mr.Rameshwar Dave, learned Dy. Government Advocate argued that the award passed by the Labour Court suffer from error apparent on the face of record. The Labour Court ought not to have directed reinstatement of the petitioner particularly when his retrenchment was allegedly made on 15.1.1985 and reference itself was made more than 12 years thereafter on 29th May, 1997. His appointment was not made by any regular or acceptable mode of recruitment but he was engaged on daily wage basis and on temporary project. He never worked on the post of Pump

Driver/Chowkidar. The workman also could not prove his working on any of these posts. The fact that the workman agitated his grievance inordinarily delayed provided a corroboration to the stand of the management that he left the job on his own accord. In the facts of the present case, the learned Labour Court ought not to have awarded any relief whatsoever to the workman or at least ought to have moulded the relief by only granting lump sum compensation in lieu of reinstatement rather than directing reinstatement.

On the other hand, Mr. Vijay Mehta, learned counsel for the respondents argued that the judgment/passed by the Labour Court was perfectly legal and justified and it does not suffer from any error apparent on the face of record. It was argued that the learned Labour Court has already moulded the relief in view of the delay in making of the reference. It has while directing reinstatement of the workman in service has held him entitled to only 20% of the back wages and that too for the period subsequent to making of the reference. It has therefore been prayed that the writ petition be dismissed.

I have given my thoughtful consideration to the arguments of the learned counsel of the parties and perused the record.

It is a fact that the workman in the instant case has asserted that his removal was made from the service of the management as long ago as 15.1.1985. It is again a fact that reference by the appropriate government was made inordinately delayed on 29th May, 1997. In between more than 12 years had gone. The petitioner was engaged on daily wage basis. It has not been proved that he was engaged through any regular mode of recruitment. Even if the stand of the management that workman left the job on his own accord is not accepted, the facts remains that he was not vigilant enough to take recourse to the legal remedy available to him within a reasonable time. When the award was passed on 12.6.2001, more than 16 years had gone by after the date of alleged retrenchment and now when the petition is being taken up for disposal in the year 2006,more than 29 years have elapsed in between.

A Division Bench of this Court in State of Rajasthan & Ors. vs. Rashid Mohammad, 2004(5) WLC(Raj.) p.463 was dealing with the case where the respondent Rashid Mohammad was appointed as a Guard on daily wages basis on 01.02.1990 and was finally removed on 17.05.1994. The Division Bench while taking into consideration the facts that already nine years have elapsed, modified the judgment of the learned Single Judge by directing that instead of reinstatement, the petitioner would be entitled to a lump sum amount of Rs.50,000/- as compensation for full and final settlement of all his claims. In doing so the learned Division Bench of this Court relied upon the various judgments of Hon'ble Supreme Court which may be summarized as under:-

> **(1)** In **Hindustan Tin Works Pvt. Ltd. Vs. Employees of Hindustan Tin Works Pvt. Ltd.** AIR 1979 SC 95, the Hon'ble Supreme Court held that the Court has discretion to award compensation instead of reinstatement if the circumstances of a particular case are unusual or exceptional so as to make the reinstatement inexpedient or improper.
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> **(2).** In **Chandu Lal Vs. The management of M/s. PAN American World Airways,** AIR 1985 SC 1128, the Apex Court, instead of granting the relief of reinstatement, granted

compensation.

(3). In **Gujarat State Road Transport Corporation & Anr. Vs. Malu Amra,** AIR 1994 SC 112, the Hon'ble Supreme Court considered the aspect of long lapse of time between the termination and the date of Award and held that the grant of compensation in lieu of reinstatement was proper.

(4). In **Sain Steel Products Vs. Naipal Singh & ors.,** AIR 2001 SCW 2426, the Hon'ble Apex Court granted a sum of Rs.50,000/- to the workman in lieu of reinstatement or back wages on the ground that there had been an inordinate delay as the services had been terminated long back.

(5). In **O.P. Bhandari Vs. Indian Tourism Development Corporation Ltd. & Ors.,** (1986) 4 SCC 337, the Hon'ble Supreme Court propounded the formula to award compensation equivalent to 3.33 years' salary (including allowances as admissible) on the basis of the last pay and allowances drawn by the appellant therein, to be a reasonable amount to be awarded in lieu of reinstatement as the appellant therein had served for eight years.

(6). In **Rolston Johan Vs. Central Government Industrial Tribunal and Labour Court & Ors.,** AIR 1994 SC 131, the Hon'ble Supreme Court granted a lump sum amount of Rs.50,000/- as compensation in full and final settlement of the claim and in lieu of reinstatement and consequential benefits to the workman.

In another judgment in Arjun Singh & 4 Ors. vs. Labour Court, Jodhpur & Ors., 2004(4) WLC(Raj.) p.145 a Division Bench of this Court was dealing with a case in which the workman Arjun Singh was appointed on 01.01.1988 and was removed from service on 01.04.1990. Apart from this, similar case of two more workmen was also considered therein. The matter came to the learned Labour Court on a reference being made to it by the appropriate Government. The Labour Court found that the termination of workman was in violation of Section 25-F of the Industrial Disputes Act. However, instead of directing reinstatement of the workman it granted compensation in lieu of reinstatement. While dealing with the said case, the Division Bench of this Court made the following observations:-

> "**5.** The appellants did not go through a process of selection and were merely appointed on daily wages basis. The time lag in each case between the passing of the award and the date of termination is quite a substantial one. Again between date of termination of services of the appellants and as of now several years have3 gone by. In the circumstances the Labour Court and the learned Single Judge were right in not foisting

the appellant on the employer after such long spells of time. The appellants cannot be directed to be reinstated now as they have been out of touch with their respective jobs of long. It is well known that faculties rust when they are not used for long. An employee who is out of job for number of years, loses his proficiency, productivity and efficiency. In case the appellants are directed to be reinstated after several years it will lead to complex situations. Not only question of their seniority, promotion and emoluments would arise, it will also affect the seniority and chances of promotion of employees who have been working continuously with respondents after the termination of the services of the appellants.

6. We are conscious of the fact that the normal rule is to direct reinstatement of a workman whose services have been terminated in violation of the industrial law, but reinstatement cannot be directed in every case. The question whether an employee should be reinstated or not depends upon various factors viz. (1) The nature of employment; (2) the period between the date of appointment and date of termination i.e. length of service; (3) the period between the date of termination and date of award; (4) the period between the date of termination and the conclusion of the proceedings. In case a person is appointed for a short period of time without making him to through a process of selection and the gap between the date of termination and the award/conclusion of proceedings is a large one, ordinarily the employee should be awarded compensation in lieu of reinstatement when it is found that his termination was in violation of the provisions

of Section 25F of the Industrial Disputes Act."

The Hon'ble Supreme Court in the case of Ratan Singh Vs. Union of India & Anr. reported in (1997) 11 SCC 396, wherein nearly 20 years had elapsed from the date when the services of the workman were terminated in violation of Section 25-F of the Industrial Disputes Act, while directing the payment of compensation in lieu of reinstatement observed as under:-

> "The services of the appellant were terminated in the year 1976. Nearly 20 years have elapsed since then. In these circumstances, we are not inclined to direct reinstatement of the appellant. But having regard to the facts and circumstances of the case, we direct that a consolidated sum of Rs.25,000/- be paid to the appellant in lieu of compensation for back wages as well as reinstatement."

In the present case also on given facts it would be evident that (i) the respondent-workman worked with the petitioners for a short duration of eight month only (ii) reference of the dispute to the labour court was made enormously delayed after twelve years (iii) award was passed

by the labour court after almost sixteen years from the date of retrenchment and (iv) a long period of twenty nine years has gone by now when this writ petition is being disposed of. In these circumstances, it would not be just and proper to direct reinstatement of the respondent workman.

In view of what has been discussed above, I find that it is a fit case in which instead of reinstatement, respondent-workman ought to be paid a lump sum compenation. I therefore set aside the award passed by the learned Labour Court and direct that in lieu of reinstatement he shall be paid a sum of Rs.50,000/- as lump sum compensation within a period of two months from the date of receipt of copy of this judgment.

The writ petition is accordingly disposed of with no order as to costs.

(MOHAMMAD RAFIQ),J.